

ASSEMBLY, No. 2085

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

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District 35 (Bergen and Passaic)

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District 38 (Bergen and Passaic)

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SYNOPSIS

Concerns expedited process for foreclosing vacant and abandoned residential properties in uncontested actions.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 6/7/2019)

1 AN ACT concerning foreclosure of residential properties, amending
2 P.L.2012, c.70 and supplementing P.L.1995, c.244 (C.2A:50-53
3 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.2012, c.70 (C.2A:50-73) is amended to read as
9 follows:

10 1. a. For the purposes of this section, "vacant and abandoned"
11 residential property means residential real estate with respect to which
12 the mortgagee proves, by clear and convincing evidence, that the
13 mortgaged real estate is vacant and has been abandoned or where a
14 notice of violation has been issued pursuant to subsection b. of section
15 1 of P.L.2014, c.35 (C.40:48-2.12s). Where a notice of violation has
16 not been issued pursuant to subsection b. of section 1 of P.L.2014, c.35
17 (C.40:48-2.12s), real property shall be deemed "vacant and
18 abandoned" if the court finds that the mortgaged property is not
19 occupied by a mortgagor or tenant as evidenced by a lease agreement
20 entered into prior to the service of a notice of intention to commence
21 foreclosure according to section 4 of the "Fair Foreclosure Act,"
22 P.L.1995, c.244 (C.2A:50-56), and at least two of the following
23 conditions exist

- 24 (1) overgrown or neglected vegetation;
- 25 (2) the accumulation of newspapers, circulars, flyers or mail on the
26 property;
- 27 (3) disconnected gas, electric, or water utility services to the
28 property;
- 29 (4) the accumulation of hazardous, noxious, or unhealthy
30 substances or materials on the property;
- 31 (5) the accumulation of junk, litter, trash or debris on the property;
- 32 (6) the absence of window treatments such as blinds, curtains or
33 shutters;
- 34 (7) the absence of furnishings and personal items;
- 35 (8) statements of neighbors, delivery persons, or government
36 employees indicating that the residence is vacant and abandoned;
- 37 (9) windows or entrances to the property that are boarded up or
38 closed off or multiple window panes that are damaged, broken and
39 unrepaired;
- 40 (10) doors to the property that are smashed through, broken off,
41 unhinged, or continuously unlocked;
- 42 (11) a risk to the health, safety or welfare of the public, or any
43 adjoining or adjacent property owners, exists due to acts of vandalism,
44 loitering, criminal conduct, or the physical destruction or deterioration
45 of the property;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

(12) an uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;

(13) the mortgagee or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing;

(14) a written statement issued by any mortgagor expressing the clear intent of all mortgagors to abandon the property;

(15) a certification from a member of the board of a planned real estate development, as defined under section 1 of P.L.1990, c.55 (C.2A:42-103), in which the property is located, stating with specificity that the property has been observed to be abandoned, that the owner of the property is at least two months in arrears of association fees, and that the member has personal knowledge regarding the contents of the certification; or

(16) any other reasonable indicia of abandonment.

b. For the purposes of this section, a residential property shall not be considered "vacant and abandoned" if, on the property:

(1) there is an unoccupied building which is undergoing construction, renovation, or rehabilitation that is proceeding diligently to completion, and the building is in compliance with all applicable ordinances, codes, regulations, and statutes;

(2) there is a building occupied on a seasonal basis, but otherwise secure; or

(3) there is a building that is secure, but is the subject of a probate action, action to quiet title, or other ownership dispute.

c. In addition to the residential mortgage foreclosure procedures set out in the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et seq.), a summary action to foreclose a mortgage debt secured by residential property that is vacant and abandoned may be brought by a lender in the Superior Court. In addition, a lender may, at any time after filing a foreclosure action, file with the court, in accordance with the Rules Governing the Courts of the State of New Jersey, an application to proceed in a summary manner because the residential property that is the subject of the foreclosure action is believed to be "vacant and abandoned"; provided, however, that this section shall not apply to a foreclosure of a timeshare interest secured by a mortgage. The summary action permitted under this section shall only be available in uncontested actions, as defined pursuant to R.4:64-1(c) of the Rules of Court.

d. (1) In addition to the service of process required by the Rules of Court, a lender shall establish, for the entry of a residential foreclosure judgment under this section, that a process server has made two unsuccessful attempts to serve the mortgagor or occupant at the residential property, which attempts must be at least 72 hours apart, and during different times of the day, either before noon, between noon and 6 P.M., or between 6 P.M. and 10 P.M.

1 (2) In addition to any notices required to be served by law or the
2 Rules of Court, a lender shall, with any order to show cause served as
3 original service of process or a motion to proceed summarily, serve a
4 notice that the lender is seeking, on the return date of the order to show
5 cause, or on the date fixed by the court, to proceed summarily for entry
6 of a residential foreclosure judgment because the property is vacant
7 and abandoned.

8 (3) When a property is deemed vacant and abandoned as herein
9 defined, a lender shall not be required to serve the debtor with the
10 notice to cure required by section 6 of the "Fair Foreclosure Act,"
11 P.L.1995, c.244 (C.2A:50-58).

12 e. (1) The court may enter a final residential mortgage foreclosure
13 judgment under this section upon a finding, (a) by clear and
14 convincing evidence, that the residential property is vacant and
15 abandoned as defined under subsection a. of this section, and (b) that a
16 review of the pleadings and documents filed with the court, as required
17 by the Rules of Court, supports the entry of a final residential
18 mortgage foreclosure judgment.

19 (2) A final residential mortgage foreclosure judgment under this
20 section shall not be entered if the court finds that:

21 (a) the property is not vacant or abandoned; or

22 (b) the mortgagor or any other defendant has filed an answer,
23 appearance, or other written objection that is not withdrawn and the
24 defenses or objection asserted provide cause to preclude the entry of a
25 final residential mortgage foreclosure judgment. Any such defense or
26 objection shall be accompanied by an affidavit stating that the defense
27 is not made solely for the purpose of delaying the relief requested
28 pursuant to the summary action. Any defense or objection that is
29 presented without the affidavit shall not be considered by the court,
30 except for good cause shown.

31 f. If a final residential mortgage foreclosure judgment under this
32 section is not entered on the original or adjourned return date of an
33 order to show cause or the date fixed by the court to proceed
34 summarily, the court may direct that the foreclosure action continue on
35 the normal track for residential mortgage foreclosure actions for
36 properties that are not vacant and abandoned and the notice to cure
37 served with the order to show cause or the order fixing that date for the
38 matter to proceed summarily shall be of no effect.

39 g. All actions brought to foreclose on real property pursuant to
40 this section shall proceed in accordance with the Rules of Court.

41 h. Nothing in this section is intended to supersede or limit other
42 procedures adopted by the Court to resolve residential mortgage
43 foreclosure actions, including, but not limited to, foreclosure
44 mediation.

45 i. Nothing in this section shall be construed to affect the rights of
46 a tenant to possession of a leasehold interest under the Anti-Eviction
47 Act, P.L.1974, c.49 (C.2A:18-61.1 et seq.), the "New Jersey

1 Foreclosure Fairness Act," P.L.2009, c.296 (C.2A:50-69 et seq.), or
2 any other applicable law.

3 j. Notwithstanding paragraph (3) of subsection a. of section 12 of
4 P.L.1995, c.244 (C.2A:50-64) to the contrary, if the court makes a
5 finding in the foreclosure judgment that the property is vacant and
6 abandoned, the sheriff shall sell the property within 60 days of the
7 sheriff's receipt of any writ of execution issued by the court. If it
8 becomes apparent that the sheriff cannot comply with the provisions of
9 this subsection, the foreclosing plaintiff may apply to the court for an
10 order appointing a Special Master or judicial agent to hold the
11 foreclosure sale.

12 (cf: P.L.2014, c.35, s.3)

13

14 2. (New section) a. When a lender is entitled to pursue a
15 summary action pursuant to subsection c. of section 1 of P.L.2012,
16 c.70 (C.2A:50-73), but fails to file an application to proceed in a
17 summary manner, and the mortgage lien of the lender is superior to all
18 or part of the lien of a planned real estate development, as defined
19 under section 1 of P.L.1990, c.55 (C.2A:42-103), then the board of the
20 planned real estate development may file a motion to compel payment
21 of association fees outstanding since the foreclosure action was filed,
22 along with ongoing fees, until occupied by a new resident. The motion
23 shall be accompanied by an affidavit from a person having personal
24 knowledge of the contents and shall contain the specific facts to
25 establish that the action is uncontested.

26 b. If the motion and affidavit filed pursuant to subsection a. of
27 this section are found to be in compliance with the provisions of that
28 subsection, have been served on the lender, debtor, and other
29 appropriate parties in accordance with the Rules Governing the Courts
30 of the State of New Jersey, and are otherwise satisfactory, the Superior
31 Court shall:

32 (1) enter an order compelling the lender to pay to the association
33 the assessments for periodic payments due for regular and usual
34 operating and common area expenses pursuant to the association's
35 annual budget coming due on or after the thirty-first day following
36 entry of the order to pay; or

37 (2) approve an application for an Order Appointing a Fiscal Agent
38 pursuant to section 3 of P.L. , c. (C.) (pending before the
39 Legislature as this bill) and in accordance with the governing
40 documents of the planned real estate development.

41

42 3. (New section) a. In accordance with N.J.S.2A:17-66 and
43 R.4:53-1 of the Rules Governing the Courts of the State of New
44 Jersey, and in addition to the powers granted to condominium
45 associations pursuant to section 21 of the "Condominium Act,"
46 P.L.1969, c.257 (C.46:8B-21), the board of a planned real estate
47 development, as defined under section 1 of P.L.1990, c.55
48 (C.2A:42-103), may apply to the Superior Court of New Jersey for

- 1 an Order Appointing a Fiscal Agent over an abandoned or
2 unoccupied unit.
- 3 b. The fiscal agent shall be authorized to:
- 4 (1) manage the unit;
- 5 (2) license the use of the unit;
- 6 (3) keep the unit insured against loss, damage by fire, or public
7 liability; and
- 8 (4) repair and otherwise do anything necessary for the care and
9 management of the unit.
- 10 c. The fiscal agent shall be authorized to:
- 11 (1) demand, collect and receive from any licensee of the unit or
12 any portion of the unit, or any person liable for the unit, any
13 payment due from any licensee of the unit;
- 14 (2) institute all legal proceedings necessary for the protection of
15 the unit, or to recover possession of the unit or any part of the unit,
16 and to institute actions for the collection of payments due, and to
17 institute summary proceedings for the removal of any licensee; and
- 18 (3) retain legal counsel to render legal advice and to provide
19 legal services as may be necessary in the performance of its duties.
- 20 d. The anti-eviction provisions of P.L.1974, c.49 (C.2A:18-
21 61.1 et seq.) shall not apply to any licensee of a unit that consists of
22 one single dwelling. In the license agreement, the fiscal agent shall
23 include prominent notice to the licensee indicating the following:
- 24 (1) the anti-eviction provisions of P.L.1974, c.49 (C.2A:18-61.1
25 et seq.) shall not apply to the licensee;
- 26 (2) a tenancy is not created by the license agreement; and
- 27 (3) the licensee understands and agrees that this license
28 agreement may be terminated for any reason or no reason at all and
29 that the licensee will be required and mandated to vacate the unit
30 including the licensee's belongings and personal effects on demand
31 of the fiscal agent without regard to any of the anti-eviction
32 provisions of P.L.1974, c.49 (C.2A:18-61.1 et seq.). The fiscal
33 agent shall make an accommodation for the licensee of no less than
34 120 hours to fully and completely vacate. However, such
35 accommodation shall not be considered a waiver, and shall not be
36 considered to create a tenancy.
- 37 e. Any licensee placed by the fiscal agent in the unit or any
38 other person that may be in possession of the unit shall pay to the
39 fiscal agent any payment due pursuant to any license agreement
40 issued by the fiscal agent.
- 41 f. Neither the title owner of a unit, nor its agent, employee,
42 heir or devisee shall be entitled to receive or collect any payment
43 due pursuant to any license agreement issued by the fiscal agent.
- 44 g. Upon receipt, the fiscal agent shall deposit payments in a
45 banking institution in its name as the fiscal agent and shall pay the
46 association the following charges:

(1) 10 percent of the payment due pursuant to any license agreement issued by the fiscal agent to reimburse the association for the purposes of managing receivership;

(2) current maintenance fees on a monthly basis; and

(3) any prior past due maintenance fees, assessments, late charges, interest and reasonable counsel fees and cost, until paid in full.

h. Upon application of the license fee or any other payments as set forth in subsection g. of this section, including, but not limited to, reimbursement to the receiver of any and all costs incurred to rehabilitate the unit to make it habitable, and once the license fee or other payments satisfy in full the underlying debt due to the association for delinquent fees and charges assessed to the unit, further monthly payments shall be applied on a pro rata basis to:

(1) the association to satisfy monthly maintenance fees or assessments as may be applicable; and

(2) monthly mortgage debt payment amortization, except that the payment shall not include any acceleration of principal or interest due to a default under the terms of the loan.

i. As used in this section:

“Fiscal agent” means a receiver, trustee, or other fiscal agent authorized pursuant to this section to manage a unit.

“Unit” means a unit, home, or lot as defined in the applicable governing documents of a planned real estate development.

4. This act shall take effect on the 90th day next following enactment.

STATEMENT

This bill would revise the existing expedited process for mortgage lenders to foreclose vacant and abandoned residential properties, and would enhance the remedies available to common interest communities with respect to the foreclosure of vacant and abandoned units.

With respect to the expedited vacant and abandoned residential property foreclosure process, the bill provides that such process only remains available to a residential mortgage lender if the foreclosure action is uncontested. The bill also requires any defense or objection to an application to proceed in such expedited manner to be accompanied by an affidavit stating that the defense or objection is not made solely for the purpose of delaying the expedited foreclosure action. Any defense or objection that is presented without the affidavit would not be considered by the court, except for good cause shown. The bill would also add to the list of conditions that may indicate that a property is vacant and abandoned for purposes of the expedited foreclosure process, a

1 certification from a member of the board of a common interest
2 community that the property has been abandoned. Such
3 certification would have to state, with specificity, that the property
4 has been observed to be abandoned, that the owner of the property
5 is at least two months in arrears of association fees, and that the
6 member has personal knowledge of the contents of the certification.

7 With respect to the remedies available to common interest
8 communities, the bill provides that, when a lender is entitled to
9 proceed through the expedited foreclosure process, but has not done
10 so, the board of the community may file with the Superior Court a
11 motion to compel the lender to pay association fees. The bill
12 requires the motion to be accompanied by an affidavit from a
13 person having personal knowledge of the contents and to contain
14 the facts necessary to establish that the action is uncontested. If the
15 motion complies with these requirements, the Superior Court may
16 either enter an order compelling the lender to pay to the planned
17 real estate development the association fees coming due on or after
18 the thirty-first day following entry of the order to pay, or,
19 alternatively, approve an application for the appointment of a fiscal
20 agent.

21 The bill also allows the board of any common interest
22 community to apply to the Superior Court for the appointment of a
23 fiscal agent over an abandoned or unoccupied unit. The fiscal agent
24 would be responsible for maintaining the unit and paying, through a
25 licensee or otherwise, association fees and assessments for benefits
26 such as utilities, common element expenses, amortization of
27 common elements, administrative costs, and maintenance of the
28 physical structure in order to protect, preserve, and maintain the
29 unit for the benefit of the community, the unit owners in the
30 community, and any others with an interest in the unit, including,
31 without limitation, mortgage holders. However, a licensee shall not
32 obtain anti-eviction protections as a consequence of the license
33 agreement. The fiscal agent may terminate the license agreement
34 for any reason or no reason at all. The fiscal agent may make an
35 accommodation, allowing the licensee up to 72 hours to vacate.
36 However, such accommodation shall not create a tenancy.